W.P.(s) 1829/05

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BEFORE THE M.P. STATE ADMINISTRATIVE TRIBUNAL.

AT JABALPUR

WP 13976/03

O.A. NO. 2269 /99

APPLICANT

Smt. P. Grihlaxmi Yadav w/o. Shri Satyarao Yadav aged about 43 years, Care of V.N. Agrawal, Photostat Copier, Opposite Collector Bengalow, Bilaspur (MP).

VERSUS

RESPONDENTS:

1. State of Madhya Pradesh, through Mahila Awam Bal Vikash, Vallabh Bhawan, Bhopal.

2. Zila Mahila Awam Bal Vikash Adhikari, Bilaspur, District. Bilaspur (MP)

3. Project Officer, DWCRA, through Collector, Bilaspur (MP).

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT 1985.

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मामला क्रमांक ~~W.P.(S) 2260/2005~~ 1829/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

16-5-2006

Shri Ashish Shrivastava, counsel for the petitioner.

Shri Satish Gupta, Deputy Govt. Advocate for the State.

By this petition, the petitioner has questioned legality, propriety and correctness of the order dated 7-6-99, Annexure-A/13, whereby the Project Officer, DWCRA, Bilaspur, discontinued the services of the petitioner along with 3 other employees of Mahila Evam Bal Vikas Department in compliance of the Government order dated 18th November 1997. The letter Annexure-A/12 dated 27-3-99, which has been made basis of above impugned order envisages that in various departments the servants are working more than the sanctioned posts which is objectionable on the ground of financial discipline, therefore, all the departments were directed to review and ascertain that only salary should be withdrawn against the sanctioned posts and the employees who are working more than the sanctioned posts shall immediately be terminated.

The case of the petitioner is that initially she was appointed by respondent No.2 vide order dated 29-11-91 on monthly rate on the vacant post of Aaya, vide Annexure-A/1. On the date of appointment there was clear-cut vacant post. After completion of 89 days, there was no break in service. The petitioner continued to work and on account of being continuously worked as an employee, the petitioner became a temporary employee and thereafter became entitled to be declared as quasi permanent employee. Vide order dated 16-8-93 services of the petitioner was suddenly discontinued without there being any order whatsoever and without giving any opportunity. The petitioner represented to the Collector and the Collector passed an order on 3-12-93 that the petitioner be taken back in service. The petitioner was taken back in service and she was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sent to Janjgir where she worked against the vacant post. On 22-12-93 she suffered fracture, therefore, she could not attend the office and an application for grant of leave was sent. However, when the petitioner went to join her duties, she was not allowed to join, therefore, the petitioner moved the Labour Court and the Labour Court vide order dated 13-12-96 directed to take the petitioner back in service with back wages. Copy of the judgment is Annexure-A/2. The petitioner is entitled to be declared as quasi permanent. On 4-3-97, respondent No.2 directed the Superintendent at Janjgir to take the petitioner back in service in view of the Labour Court judgment. The petitioner was again posted vide order dated 3-4-97. The Collector passed an order regarding posting of the petitioner on 6-5-97. The State Government had formulated a policy vide its memo dated 9-1-90 to regularize the services of daily wage employees. The appointment of the petitioner was made on vacant post. Thereafter, on 27th March 1999 a circular was issued on the ground that the persons are being appointed in excess of sanctioned post. Misinterpreting and ignoring the order of High Court dated 10-10-94 passed in W.P. No.923/94 vide order dated 2-6-99 the services of the petitioner were terminated treating her to be a daily wager employee. Copy of the order is Annexure-A/13. The petitioner submitted a representation stating that similarly situated employee namely Smt. Sarswati Sahu who was working as Aaya has been granted regular pay scale and she is still continuing. Therefore, the impugned order be quashed and respondents be directed to consider the case of the petitioner for regularization.

Return has been filed on behalf of the State/respondent stating that return filed in O.A. No.2291/99 and averments made thereunder are adopted. There is no sanctioned post of Aaya or Sadan Sevak in Bal

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sanrakshan Grah, Bilaspur. The order of appointment does not create any right in favour of the petitioner for claiming regularization. Reply filed in O.A. No.2291/99 is that there is no sanctioned post and the appointment was not made against the regular post.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that initially the petitioner was posted against the vacant post under order Annexure-A/1 for a period of 89 days and thereafter, she continued to work. In the year 1993 she had not joined her duties and she remained on leave on account of fracture. She moved the Labour Court and the Labour Court passed the order Annexure-A/2 and thereafter she was taken back in service under the orders of Collector, as such the impugned order suffers from illegality. He further argued that similarly situated another employee namely Smt. Sarswati Sahu was appointed and she is still continuing in service. He also argued that as per the Labour Court judgment Annexure-A/2 the petitioner is entitled to continue.

On the other hand, learned Deputy Govt. Advocate submitted that the petitioner's appointment was not against the regular vacant post and as per the Government order Annexure-A/12 dated 27th March 99 the persons who were not working against the regular sanctioned post were to be terminated, therefore, the services of the petitioner were discontinued and she is not entitled for regularization.

Having heard learned counsel for the parties, I have perused the record. Initially the petitioner was appointed vide Annexure-A/1 dated 20-11-91 by the District Woman and Child Development Officer on the post of Aaya for a period of 89 days temporarily on the monthly salary as per the Collector rate. There is no further order in the file regarding continuation

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

after 89 days. However, as per the averments made in the petition, the petitioner's services were discontinued in the year 1993 when she was absent. She approached the Labour Court and the Labour Court by ex-parte order dated 13-12-96 allowed the application of the petitioner as none appeared on behalf of the State and directed for reinstatement of the petitioner, therefore, in the year 1997 as per the Collector's order she was allowed to join. However, the Superintendent, Child Sanrakshan Grih, Janjgir vide order Annexure-A/5 dated 19-3-97 relieved the petitioner on the ground that only two sanctioned posts are there which are already filled. However, vide order dated 22-3-97 the Additional Collector, Bilaspur sent the order to the Superintendent, Bal Sanrakshan Grih, Janjgir referring the Labour Court judgement to take the petitioner on duty and in pursuance of that the petitioner reported on the duty on 19-3-97 under Annexure-A/6. Vide order Anenxure-A/9 dated 6-5-97 the Additional Collector, Bilaspur posted the petitioner in the Bal Sanrakshan Grih, Bilaspur against the post of Sadan Sevak until further orders. Ultimately, in view of the Government order dated 27th March 99 treating the petitioner as excess and not appointed against the permanent regular post and her services were terminated under Annexure-A/3.

Perusal of the above record shows that initially the petitioner was appointed for a period of 89 days temporarily based on the monthly rate fixed by the Collector. It was mentioned that the appointment is totally temporary and her services can be terminated without any prior notice. In the first appointment order nothing is mentioned that she was appointed against the permanent regular post and thereafter there is no order which shows that the appointment of the petitioner was made against any permanent regular post. Therefore, the petitioner was appointed

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

temporarily and however, her services were continued. In the meantime, she obtained the ex-parte order from the Labour Court against the Government in which the department remained un-represented and ex-parte order was passed. The grievance is that she was never appointed and posted against regular post and that is why her services were discontinued as per the Government order dated 27th March 99.

In the recent judgment of Constitution Bench of the Hon'ble Apex Court in the matter of **Secretary, State of Karnataka and others V. Umadevi (3) and others** reported in **(2006) 4 SCC 1** the Apex Court has held that:

> "……it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him.

In para-45 of the judgment it has been observed that:

"While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment to take the view that a person who has temporarily or casually got

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> employed should be directed to be continued permanently.

As has been observed above, in the present case, the petitioner has not been able to establish that her appointment was against regular post. The appointment order Annexure-A/1 shows that her appointment was purely temporary for a period of 89 days. She was allowed to continue for one or the other reason and as per the finding of the Constitution Bench judgment that does not give her right to be regularized or continued forever. The Government of Madhya Pradesh after reviewing and realizing that in various departments numbers of employees are working more than the sanctioned posts which affects the financial administration of the State, therefore, passed the order Annexure-A/12 dated 27th March 1999 that every department should review the position and if any employee is found in excess of the sanctioned post, then he/ she should be discontinued. Accordingly, the petitioner's services were discontinued.

As far as argument of learned counsel for the petitioner that the petitioner was allowed to continue under the order of Labour Court dated 13-12-96 is concerned, the Apex Court in the same Constitution Bench Judgment, in para-54, has held that:

> "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

Therefore, on the strength of the Labour Court's judgment the petitioner is not entitled to continue.

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	As far as other argument raised by learned counsel for the petitioner that similarly situated employee namely Smt. Sarswati Sahu was granted regular pay scale and she is still continuing in service under the order dated 5-12-97, Annexure-A/15, is concerned, there is nothing on record which shows that how she was allowed to continue and what were the facts of her case, whether she was allowed and permanently posted or otherwise, therefore, the petitioner cannot be allowed to continue on the strength of Smt. Sarswati Sahu's order. Even if it is ~~stated~~ taken that she was allowed to continue, even then one wrong cannot make the thing right and on that ground the petitioner is not entitled to continue in service as per the decision of the Constitution Bench judgment of the Apex Court which has been referred hereinabove. In view of the above, I do not find any substance in this petition, same is devoid of merit and therefore, deserves to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	

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23/6/2017